

AMENDED IN ASSEMBLY JANUARY 4, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 234

Introduced by Assembly Member Wieckowski

February 3, 2011

An act ~~relating to public health~~, to repeal and amend Sections 17053.80 and 23623 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 234, as amended, Wieckowski. ~~Healthy food options. Income tax: credits: full-time employees: hires.~~

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws, including a credit for taxable years beginning on or after January 1, 2009, in the amount of \$3,000 for each full-time employee hired by a qualified employer, with a maximum cumulative credit of \$400,000,000 for all taxable years. Those laws define “qualified employer” as a taxpayer that employed 20 or fewer employees as of the last day of the preceding taxable year.

This bill would, under both laws, for taxable years beginning on or after January 1, 2012, redefine “qualified employer” to mean a disabled veteran business enterprise, a disadvantaged business enterprise, a microbusiness, or a small business, respectively, as defined, redefine “qualified full-time employee,” as provided, and increase the amount of credit allowed for each qualified full-time employee to either \$4,500 or \$9,100, as provided.

This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article

XIII A of the California Constitution, and thus would require for passage the approval of ²/₃ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Existing law, until January 1, 2013, requires the State Department of Public Health to develop a “Healthy Food Purchase” pilot program to increase the sale and purchase of fresh fruits and vegetables in low-income communities, as specified. Existing law authorizes the department to implement the program to the extent that the Department of Finance determines that there are sufficient funds available for that purpose from any source, including state funds, federal funds, except as specified, or funds received from grants or private donations.

This bill would declare the intent of the Legislature to enact legislation to ensure that all Californians have access to fresh produce and healthy food options.

Vote: ~~majority~~²/₃. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 17053.80 of the Revenue and Taxation*
- 2 *Code, as added by Section 3 of Chapter 10 of the Third*
- 3 *Extraordinary Session of the Statutes of 2009, is repealed.*
- 4 ~~17053.80.—(a) For each taxable year beginning on or after~~
- 5 ~~January 1, 2009, there shall be allowed as a credit against the “net~~
- 6 ~~tax,” as defined in Section 17039, three thousand dollars (\$3,000)~~
- 7 ~~for each net increase in qualified full-time employees, as specified~~
- 8 ~~in subdivision (c), hired during the taxable year by a qualified~~
- 9 ~~employer.~~
- 10 ~~(b) For purposes of this section:~~
- 11 ~~(1) “Acquired” includes any gift, inheritance, transfer incident~~
- 12 ~~to divorce, or any other transfer, whether or not for consideration.~~
- 13 ~~(2) “Qualified full-time employee” means:~~
- 14 ~~(A) A qualified employee who was paid qualified wages by the~~
- 15 ~~qualified employer for services of not less than an average of 35~~
- 16 ~~hours per week.~~
- 17 ~~(B) A qualified employee who was a salaried employee and~~
- 18 ~~was paid compensation during the taxable year for full-time~~
- 19 ~~employment, within the meaning of Section 515 of the Labor Code,~~
- 20 ~~by the qualified employer.~~

1 ~~(3) A “qualified employee” shall not include any of the~~
2 ~~following:~~

3 ~~(A) An employee certified as a qualified employee in an~~
4 ~~enterprise zone designated in accordance with Chapter 12.8~~
5 ~~(commencing with Section 7070) of Division 7 of Title 1 of the~~
6 ~~Government Code.~~

7 ~~(B) An employee certified as a qualified disadvantaged~~
8 ~~individual in a manufacturing enhancement area designated in~~
9 ~~accordance with Section 7073.8 of the Government Code.~~

10 ~~(C) An employee certified as a qualified employee in a targeted~~
11 ~~tax area designated in accordance with Section 7097 of the~~
12 ~~Government Code.~~

13 ~~(D) An employee certified as a qualified disadvantaged~~
14 ~~individual or a qualified displaced employee in a local agency~~
15 ~~military base recovery area (LAMBRA) designated in accordance~~
16 ~~with Chapter 12.97 (commencing with Section 7105) of Division~~
17 ~~7 of Title 1 of the Government Code.~~

18 ~~(E) An employee whose wages are included in calculating any~~
19 ~~other credit allowed under this part.~~

20 ~~(4) “Qualified employer” means a taxpayer that, as of the last~~
21 ~~day of the preceding taxable year, employed a total of 20 or fewer~~
22 ~~employees.~~

23 ~~(5) “Qualified wages” means wages subject to Division 6~~
24 ~~(commencing with Section 13000) of the Unemployment Insurance~~
25 ~~Code.~~

26 ~~(6) “Annual full-time equivalent” means either of the following:~~

27 ~~(A) In the case of a full-time employee paid hourly qualified~~
28 ~~wages, “annual full-time equivalent” means the total number of~~
29 ~~hours worked for the taxpayer by the employee (not to exceed~~
30 ~~2,000 hours per employee) divided by 2,000.~~

31 ~~(B) In the case of a salaried full-time employee, “annual~~
32 ~~full-time equivalent” means the total number of weeks worked for~~
33 ~~the taxpayer by the employee divided by 52.~~

34 ~~(c) The net increase in qualified full-time employees of a~~
35 ~~qualified employer shall be determined as provided by this~~
36 ~~subdivision:~~

37 ~~(1) (A) The net increase in qualified full-time employees shall~~
38 ~~be determined on an annual full-time equivalent basis by~~
39 ~~subtracting from the amount determined in subparagraph (C) the~~
40 ~~amount determined in subparagraph (B).~~

1 ~~(B) The total number of qualified full-time employees employed~~
2 ~~in the preceding taxable year by the taxpayer and by any trade or~~
3 ~~business acquired by the taxpayer during the current taxable year.~~

4 ~~(C) The total number of full-time employees employed in the~~
5 ~~current taxable year by the taxpayer and by any trade or business~~
6 ~~acquired during the current taxable year.~~

7 ~~(2) For taxpayers who first commence doing business in this~~
8 ~~state during the taxable year, the number of full-time employees~~
9 ~~for the immediately preceding prior taxable year shall be zero.~~

10 ~~(d) In the case where the credit allowed by this section exceeds~~
11 ~~the “net tax,” the excess may be carried over to reduce the “net~~
12 ~~tax” in the following year, and succeeding seven years if necessary,~~
13 ~~until the credit is exhausted.~~

14 ~~(e) Any deduction otherwise allowed under this part for qualified~~
15 ~~wages shall not be reduced by the amount of the credit allowed~~
16 ~~under this section.~~

17 ~~(f) For purposes of this section:~~

18 ~~(1) All employees of the trades or businesses that are treated as~~
19 ~~related under either Section 267, 318, or 707 of the Internal~~
20 ~~Revenue Code shall be treated as employed by a single taxpayer.~~

21 ~~(2) In determining whether the taxpayer has first commenced~~
22 ~~doing business in this state during the taxable year, the provisions~~
23 ~~of subdivision (f) of Section 17276, without application of~~
24 ~~paragraph (7) of that subdivision, shall apply.~~

25 ~~(g) (1) (A) Credit under this section and Section 23623 shall~~
26 ~~be allowed only for credits claimed on timely filed original returns~~
27 ~~received by the Franchise Tax Board on or before the cut-off date~~
28 ~~established by the Franchise Tax Board.~~

29 ~~(B) For purposes of this paragraph, the cut-off date shall be the~~
30 ~~last day of the calendar quarter within which the Franchise Tax~~
31 ~~Board estimates it will have received timely filed original returns~~
32 ~~claiming credits under this section and Section 23623 that~~
33 ~~cumulatively total four hundred million dollars (\$400,000,000)~~
34 ~~for all taxable years.~~

35 ~~(2) The date a return is received shall be determined by the~~
36 ~~Franchise Tax Board.~~

37 ~~(3) (A) The determinations of the Franchise Tax Board with~~
38 ~~respect to the cut-off date, the date a return is received, and whether~~
39 ~~a return has been timely filed for purposes of this subdivision may~~
40 ~~not be reviewed in any administrative or judicial proceeding~~

~~(B) Any disallowance of a credit claimed due to a determination under this subdivision, including the application of the limitation specified in paragraph (1), shall be treated as a mathematical error appearing on the return. Any amount of tax resulting from such disallowance may be assessed by the Franchise Tax Board in the same manner as provided by Section 19051.~~

~~(4) The Franchise Tax Board shall periodically provide notice on its Web site with respect to the amount of credit under this section and Section 23623 claimed on timely filed original returns received by the Franchise Tax Board.~~

~~(h) (1) The Franchise Tax Board may prescribe rules, guidelines or procedures necessary or appropriate to carry out the purposes of this section, including any guidelines regarding the limitation on total credits allowable under this section and Section 23623 and guidelines necessary to avoid the application of paragraph (2) of subdivision (f) through split-ups, shell corporations, partnerships, tiered ownership structures, or otherwise.~~

~~(2) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to this section.~~

~~(i) This section shall remain in effect only until December 1 of the calendar year after the year of the cut-off date, and as of that December 1 is repealed.~~

SEC. 2. Section 17053.80 of the Revenue and Taxation Code, as added by Section 3 of Chapter 17 of the Third Extraordinary Session of the Statutes of 2009, is amended to read:

17053.80. (a) For each taxable year beginning on or after January 1, 2009, and taxable years beginning before January 1, 2012, there shall be allowed as a credit against the "net tax," as defined in Section 17039, three thousand dollars (\$3,000) for each net increase in qualified full-time employees, as specified in subdivision (c), hired during the taxable year by a qualified employer.

(2) For each taxable year beginning on or after January 1, 2012, there shall be allowed as a credit against the "net tax," as defined in Section 17039, an amount as specified in subparagraph (A) or (B) for each net increase in qualified full-time employees,

1 *as specified in subdivision (c), hired during the taxable year by a*
2 *qualified employer.*

3 (A) *For qualified full-time employees who are paid a qualified*
4 *wage of less than sixteen dollars (\$16) per hour, or an equivalent*
5 *amount if qualified wages are paid other than on an hourly basis,*
6 *four thousand five hundred dollars (4,500).*

7 (B) *For qualified full-time employees who are paid a qualified*
8 *wage of more than sixteen dollars (\$16) per hour, or an equivalent*
9 *amount if qualified wages are paid other than on an hourly basis,*
10 *nine thousand one hundred dollars (\$9,100).*

11 (b) For purposes of this section:

12 (1) “Acquired” includes any gift, inheritance, transfer incident
13 to divorce, or any other transfer, whether or not for consideration.

14 (2) ~~“Qualified”~~ *For taxable years beginning on or after January*
15 *1, 2012, “qualified full-time employee” means:*

16 (A) A qualified employee who was *unemployed for the 30 days*
17 *immediately prior to being hired by the qualified employer and*
18 *who was paid qualified wages during the taxable year by the*
19 *qualified employer for services of not less than an average of 35*
20 *hours per week.*

21 (B) A qualified employee who was *unemployed for the 30 days*
22 *immediately prior to being hired by the qualified employer and*
23 *who was a salaried employee and was paid compensation during*
24 *the taxable year for full-time employment, within the meaning of*
25 *Section 515 of the Labor Code, by the qualified employer.*

26 (3) A “qualified employee” shall not include any of the
27 following:

28 (A) An employee certified as a qualified employee in an
29 enterprise zone designated in accordance with Chapter 12.8
30 (commencing with Section 7070) of Division 7 of Title 1 of the
31 Government Code.

32 (B) An employee certified as a qualified disadvantaged
33 individual in a manufacturing enhancement area designated in
34 accordance with Section 7073.8 of the Government Code.

35 (C) An employee certified as a qualified employee in a targeted
36 tax area designated in accordance with Section 7097 of the
37 Government Code.

38 (D) An employee certified as a qualified disadvantaged
39 individual or a qualified displaced employee in a local agency
40 military base recovery area (LAMBRA) designated in accordance

1 with Chapter 12.97 (commencing with Section 7105) of Division
2 7 of Title 1 of the Government Code.

3 (E) An employee whose wages are included in calculating any
4 other credit allowed under this part.

5 (4) ~~“Qualified”~~ (A) *For taxable years beginning on or after*
6 *January 1, 2009, and before January 1, 2012, “qualified employer”*
7 means a taxpayer that, as of the last day of the preceding taxable
8 year, employed a total of 20 or fewer employees.

9 (B) *For taxable years beginning on or after January 1, 2012,*
10 *“qualified employer” means a taxpayer that, as of the last day of*
11 *the preceding taxable year, was any of the following:*

12 (i) A *“disabled veteran business enterprise” as defined in*
13 *paragraph (7) of subdivision (b) of Section 999 of the Military and*
14 *Veterans Code.*

15 (ii) A *“disadvantaged business enterprise” as defined in*
16 *subdivision (f) of Section 2051 of the Public Contract Code.*

17 (iii) A *“microbusiness” as defined in paragraph (2) of*
18 *subdivision (d) of Section 14837 of the Government Code.*

19 (iv) A *“small business” as defined in paragraph (1) of*
20 *subdivision (d) of Section 14837 of the Government Code.*

21 (5) “Qualified wages” means wages subject to Division 6
22 (commencing with Section 13000) of the Unemployment Insurance
23 Code.

24 (6) “Annual full-time equivalent” means either of the following:

25 (A) In the case of a full-time employee paid hourly qualified
26 wages, “annual full-time equivalent” means the total number of
27 hours worked for the taxpayer by the employee (not to exceed
28 ~~2,000~~ 1,820 hours per employee) divided by ~~2,000~~ 1,820.

29 (B) In the case of a salaried full-time employee, “annual
30 full-time equivalent” means the total number of weeks worked for
31 the taxpayer by the employee divided by 52.

32 (c) The net increase in qualified full-time employees of a
33 qualified employer shall be determined as provided by this
34 subdivision:

35 (1) (A) The net increase in qualified full-time employees shall
36 be determined on an annual full-time equivalent basis by
37 subtracting from the amount determined in subparagraph (C) the
38 amount determined in subparagraph (B).

1 (B) The total number of qualified full-time employees employed
2 in the preceding taxable year by the taxpayer and by any trade or
3 business acquired by the taxpayer during the current taxable year.

4 (C) The total number of full-time employees employed in the
5 current taxable year by the taxpayer and by any trade or business
6 acquired during the current taxable year.

7 (2) For taxpayers who first commence doing business in this
8 state during the taxable year, the number of full-time employees
9 for the immediately preceding prior taxable year shall be zero.

10 (d) In the case where the credit allowed by this section exceeds
11 the “net tax,” the excess may be carried over to reduce the “net
12 tax” in the following year, and succeeding seven years if necessary,
13 until the credit is exhausted.

14 (e) Any deduction otherwise allowed under this part for qualified
15 wages shall not be reduced by the amount of the credit allowed
16 under this section.

17 (f) For purposes of this section:

18 (1) All employees of the trades or businesses that are treated as
19 related under either Section 267, 318, or 707 of the Internal
20 Revenue Code shall be treated as employed by a single taxpayer.

21 (2) In determining whether the taxpayer has first commenced
22 doing business in this state during the taxable year, the provisions
23 of subdivision (f) of Section ~~17276~~ 17276.20, without application
24 of paragraph (7) of that subdivision, shall apply.

25 (g) (1) (A) Credit under this section and Section 23623 shall
26 be allowed only for credits claimed on timely filed original returns
27 received by the Franchise Tax Board on or before the ~~cut-off~~ *cutoff*
28 date established by the Franchise Tax Board.

29 (B) For purposes of this paragraph, the ~~cut-off~~ *cutoff* date shall
30 be the last day of the calendar quarter within which the Franchise
31 Tax Board estimates it will have received timely filed original
32 returns claiming credits under this section and Section 23623 that
33 cumulatively total four hundred million dollars (\$400,000,000)
34 for all taxable years.

35 (2) The date a return is received shall be determined by the
36 Franchise Tax Board.

37 (3) (A) The determinations of the Franchise Tax Board with
38 respect to the ~~cut-off~~ *cutoff* date, the date a return is received, and
39 whether a return has been timely filed for purposes of this

1 subdivision may not be reviewed in any administrative or judicial
2 proceeding.

3 (B) Any disallowance of a credit claimed due to a determination
4 under this subdivision, including the application of the limitation
5 specified in paragraph (1), shall be treated as a mathematical error
6 appearing on the return. Any amount of tax resulting from such
7 disallowance may be assessed by the Franchise Tax Board in the
8 same manner as provided by Section 19051.

9 (4) The Franchise Tax Board shall periodically provide notice
10 on its *Internet* Web site with respect to the amount of credit under
11 this section and Section 23623 claimed on timely filed original
12 returns received by the Franchise Tax Board.

13 (h) (1) The Franchise Tax Board may prescribe rules, ~~guidelines~~
14 *guidelines*, or procedures necessary or appropriate to carry out the
15 purposes of this section, including any guidelines regarding the
16 limitation on total credits allowable under this section and Section
17 23623 and guidelines necessary to avoid the application of
18 paragraph (2) of subdivision (f) through ~~split-ups~~ *splitups*, shell
19 corporations, partnerships, tiered ownership structures, or
20 otherwise.

21 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
22 Division 3 of Title 2 of the Government Code does not apply to
23 any standard, criterion, procedure, determination, rule, notice, or
24 guideline established or issued by the Franchise Tax Board
25 pursuant to this section.

26 (i) This section shall remain in effect only until December 1 of
27 the calendar year after the year of the ~~cut-off~~ *cutoff* date, and as
28 of that December 1 is repealed.

29 *SEC. 3. Section 23623 of the Revenue and Taxation Code, as*
30 *added by Section 8 of Chapter 10 of the Third Extraordinary*
31 *Session of the Statutes of 2009, is repealed.*

32 ~~23623. (a) For each taxable year beginning on or after January~~
33 ~~1, 2009, there shall be allowed as a credit against the "tax," as~~
34 ~~defined in Section 23036, three thousand dollars (\$3,000) for each~~
35 ~~net increase in qualified full-time employees, as specified in~~
36 ~~subdivision (e), hired during the taxable year by a qualified~~
37 ~~employer.~~

38 ~~(b) For purposes of this section:~~

39 ~~(1) "Acquired" includes any gift, inheritance, transfer incident~~
40 ~~to divorce, or any other transfer, whether or not for consideration.~~

1 ~~(2) “Qualified full-time employee” means:~~

2 ~~(A) A qualified employee who was paid qualified wages during~~
3 ~~the taxable year by the qualified employer for services of not less~~
4 ~~than an average of 35 hours per week.~~

5 ~~(B) A qualified employee who was a salaried employee and~~
6 ~~was paid compensation during the taxable year for full-time~~
7 ~~employment, within the meaning of Section 515 of the Labor Code,~~
8 ~~by the qualified employer.~~

9 ~~(3) A “qualified employee” shall not include any of the~~
10 ~~following:~~

11 ~~(A) An employee certified as a qualified employee in an~~
12 ~~enterprise zone designated in accordance with Chapter 12.8~~
13 ~~(commencing with Section 7070) of Division 7 of Title 1 of the~~
14 ~~Government Code.~~

15 ~~(B) An employee certified as a qualified disadvantaged~~
16 ~~individual in a manufacturing enhancement area designated in~~
17 ~~accordance with Section 7073.8 of the Government Code.~~

18 ~~(C) An employee certified as a qualified employee in a targeted~~
19 ~~tax area designated in accordance with Section 7097 of the~~
20 ~~Government Code.~~

21 ~~(D) An employee certified as a qualified disadvantaged~~
22 ~~individual or a qualified displaced employee in a local agency~~
23 ~~military base recovery area (LAMBRA) designated in accordance~~
24 ~~with Chapter 12.97 (commencing with Section 7105) of Division~~
25 ~~7 of Title 1 of the Government Code.~~

26 ~~(E) An employee whose wages are included in calculating any~~
27 ~~other credit allowed under this part.~~

28 ~~(4) “Qualified employer” means a taxpayer that, as of the last~~
29 ~~day of the preceding taxable year, employed a total of 20 or fewer~~
30 ~~employees.~~

31 ~~(5) “Qualified wages” means wages subject to Division 6~~
32 ~~(commencing with Section 13000) of the Unemployment Insurance~~
33 ~~Code.~~

34 ~~(6) “Annual full-time equivalent” means either of the following:~~

35 ~~(A) In the case of a full-time employee paid hourly qualified~~
36 ~~wages, “annual full-time equivalent” means the total number of~~
37 ~~hours worked for the taxpayer by the employee (not to exceed~~
38 ~~2,000 hours per employee) divided by 2,000.~~

1 ~~(B) In the case of a salaried full-time employee, “annual~~
2 ~~full-time equivalent” means the total number of weeks worked for~~
3 ~~the taxpayer by the employee divided by 52.~~

4 ~~(e) The net increase in qualified full-time employees of a~~
5 ~~qualified employer shall be determined as provided by this~~
6 ~~subdivision:~~

7 ~~(1) (A) The net increase in qualified full-time employees shall~~
8 ~~be determined on an annual full-time equivalent basis by~~
9 ~~subtracting from the amount determined in subparagraph (C) the~~
10 ~~amount determined in subparagraph (B).~~

11 ~~(B) The total number of qualified full-time employees employed~~
12 ~~in the preceding taxable year by the taxpayer and by any trade or~~
13 ~~business acquired by the taxpayer during the current taxable year.~~

14 ~~(C) The total number of full-time employees employed in the~~
15 ~~current taxable year by the taxpayer and by any trade or business~~
16 ~~acquired during the current taxable year.~~

17 ~~(2) For taxpayers who first commence doing business in this~~
18 ~~state during the taxable year, the number of full-time employees~~
19 ~~for the immediately preceding prior taxable year shall be zero.~~

20 ~~(d) In the case where the credit allowed by this section exceeds~~
21 ~~the “tax,” the excess may be carried over to reduce the “tax” in~~
22 ~~the following year, and succeeding seven years if necessary, until~~
23 ~~the credit is exhausted.~~

24 ~~(e) Any deduction otherwise allowed under this part for qualified~~
25 ~~wages shall not be reduced by the amount of the credit allowed~~
26 ~~under this section.~~

27 ~~(f) For purposes of this section:~~

28 ~~(1) All employees of the trades or businesses that are treated as~~
29 ~~related under either Section 267, 318, or 707 of the Internal~~
30 ~~Revenue Code shall be treated as employed by a single taxpayer.~~

31 ~~(2) In determining whether the taxpayer has first commenced~~
32 ~~doing business in this state during the taxable year, the provisions~~
33 ~~of subdivision (f) of Section 17276, without application of~~
34 ~~paragraph (7) of that subdivision, shall apply.~~

35 ~~(g) (1) (A) Credit under this section and Section 17053.80 shall~~
36 ~~be allowed only for credits claimed on timely filed original returns~~
37 ~~received by the Franchise Tax Board on or before the cut-off date~~
38 ~~established by the Franchise Tax Board.~~

39 ~~(B) For purposes of this paragraph, the cut-off date shall be the~~
40 ~~last day of the calendar quarter within which the Franchise Tax~~

1 Board estimates it will have received timely filed original returns
2 claiming credits under this section and Section 17053.80 that
3 cumulatively total four hundred million dollars (\$400,000,000)
4 for all taxable years.

5 (2) The date a return is received shall be determined by the
6 Franchise Tax Board.

7 (3) (A) The determinations of the Franchise Tax Board with
8 respect to the cut-off date, the date a return is received, and whether
9 a return has been timely filed for purposes of this subdivision may
10 not be reviewed in any administrative or judicial proceeding.

11 (B) Any disallowance of a credit claimed due to a determination
12 under this subdivision, including the application of the limitation
13 specified in paragraph (1), shall be treated as a mathematical error
14 appearing on the return. Any amount of tax resulting from such
15 disallowance may be assessed by the Franchise Tax Board in the
16 same manner as provided by Section 19051.

17 (4) The Franchise Tax Board shall periodically provide notice
18 on its Web site with respect to the amount of credit under this
19 section and Section 17053.80 claimed on timely filed original
20 returns received by the Franchise Tax Board.

21 (h) (1) The Franchise Tax Board may prescribe rules, guidelines
22 or procedures necessary or appropriate to carry out the purposes
23 of this section, including any guidelines regarding the limitation
24 on total credits allowable under this section and Section 17053.80
25 and guidelines necessary to avoid the application of paragraph (2)
26 of subdivision (f) through split-ups, shell corporations, partnerships,
27 tiered ownership structures, or otherwise.

28 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
29 Division 3 of Title 2 of the Government Code does not apply to
30 any standard, criterion, procedure, determination, rule, notice, or
31 guideline established or issued by the Franchise Tax Board
32 pursuant to this section.

33 (i) This section shall remain in effect only until December 1 of
34 the calendar year after the year of the cut-off date, and as of that
35 December 1 is repealed.

36 *SEC. 4. Section 23623 of the Revenue and Taxation Code, as*
37 *added by Section 8 of Chapter 17 of the Third Extraordinary*
38 *Session of the Statutes of 2009, is amended to read:*

39 23623. (a) (1) For each taxable year beginning on or after
40 January 1, 2009, and before January 1, 2012, there shall be allowed

1 as a credit against the “tax,” as defined in Section 23036, three
2 thousand dollars (\$3,000) for each net increase in qualified
3 full-time employees, as specified in subdivision (c), hired during
4 the taxable year by a qualified employer.

5 (2) *For each taxable year beginning on or after January 1,*
6 *2012, there shall be allowed as a credit against the “net tax,” as*
7 *defined in Section 17039, an amount as specified in subparagraph*
8 *(A) or (B) for each net increase in qualified full-time employees,*
9 *as specified in subdivision (c), hired during the taxable year by a*
10 *qualified employer.*

11 (A) *For qualified full-time employees who are paid a qualified*
12 *wage of less than sixteen dollars (\$16) per hour, or an equivalent*
13 *amount if qualified wages are paid other than on an hourly basis,*
14 *four thousand five hundred dollars (\$4,500).*

15 (B) *For qualified full-time employees who are paid a qualified*
16 *wage of more than sixteen dollars (\$16) per hour, or an equivalent*
17 *amount if qualified wages are paid other than on an hourly basis,*
18 *nine thousand one hundred dollars (\$9,100).*

19 (b) For purposes of this section:

20 (1) “Acquired” includes any gift, inheritance, transfer incident
21 to divorce, or any other transfer, whether or not for consideration.

22 (2) ~~“Qualified”~~ *For taxable years beginning on or after January*
23 *1, 2012, “qualified full-time employee” means:*

24 (A) A qualified employee who was *unemployed for the 30 days*
25 *immediately prior to being hired by the qualified employer and*
26 *who was paid qualified wages during the taxable year by the*
27 *qualified employer for services of not less than an average of 35*
28 *hours per week.*

29 (B) A qualified employee who was *unemployed for the 30 days*
30 *immediately prior to being hired by the qualified employer and*
31 *who was a salaried employee and was paid compensation during*
32 *the taxable year for full-time employment, within the meaning of*
33 *Section 515 of the Labor Code, by the qualified employer.*

34 (3) A “qualified employee” shall not include any of the
35 following:

36 (A) An employee certified as a qualified employee in an
37 enterprise zone designated in accordance with Chapter 12.8
38 (commencing with Section 7070) of Division 7 of Title 1 of the
39 Government Code.

1 (B) An employee certified as a qualified disadvantaged
2 individual in a manufacturing enhancement area designated in
3 accordance with Section 7073.8 of the Government Code.

4 (C) An employee certified as a qualified employee in a targeted
5 tax area designated in accordance with Section 7097 of the
6 Government Code.

7 (D) An employee certified as a qualified disadvantaged
8 individual or a qualified displaced employee in a local agency
9 military base recovery area (LAMBRA) designated in accordance
10 with Chapter 12.97 (commencing with Section 7105) of Division
11 7 of Title 1 of the Government Code.

12 (E) An employee whose wages are included in calculating any
13 other credit allowed under this part.

14 (4) ~~“Qualified—~~(A) *For taxable years beginning on or after*
15 *January 1, 2009, and before January 1, 2012, “qualified employer”*
16 *means a taxpayer that, as of the last day of the preceding taxable*
17 *year, employed a total of 20 or fewer employees.*

18 (B) *For taxable years beginning on or after January 1, 2012,*
19 *“qualified employer” means a taxpayer that, as of the last day of*
20 *the preceding taxable year, was any of the following:*

21 (i) A *“disabled veteran business enterprise” as defined in*
22 *paragraph (7) of subdivision (b) of Section 999 of the Military and*
23 *Veterans Code.*

24 (ii) A *“disadvantaged business enterprise” as defined in*
25 *subdivision (f) of Section 2051 of the Public Contract Code.*

26 (iii) A *“microbusiness” as defined in paragraph (2) of*
27 *subdivision (d) of Section 14837 of the Government Code.*

28 (iv) A *“small business” as defined in paragraph (1) of*
29 *subdivision (d) of Section 14837 of the Government Code.*

30 (5) “Qualified wages” means wages subject to Division 6
31 (commencing with Section 13000) of the Unemployment Insurance
32 Code.

33 (6) “Annual full-time equivalent” means either of the following:

34 (A) In the case of a full-time employee paid hourly qualified
35 wages, “annual full-time equivalent” means the total number of
36 hours worked for the taxpayer by the employee (not to exceed
37 ~~2,000~~ 1,820 hours per employee) divided by ~~2,000~~ 1,820.

38 (B) In the case of a salaried full-time employee, “annual
39 full-time equivalent” means the total number of weeks worked for
40 the taxpayer by the employee divided by 52.

1 (c) The net increase in qualified full-time employees of a
2 qualified employer shall be determined as provided by this
3 subdivision:

4 (1) (A) The net increase in qualified full-time employees shall
5 be determined on an annual full-time equivalent basis by
6 subtracting from the amount determined in subparagraph (C) the
7 amount determined in subparagraph (B).

8 (B) The total number of qualified full-time employees employed
9 in the preceding taxable year by the taxpayer and by any trade or
10 business acquired by the taxpayer during the current taxable year.

11 (C) The total number of full-time employees employed in the
12 current taxable year by the taxpayer and by any trade or business
13 acquired during the current taxable year.

14 (2) For taxpayers who first commence doing business in this
15 state during the taxable year, the number of full-time employees
16 for the immediately preceding prior taxable year shall be zero.

17 (d) In the case where the credit allowed by this section exceeds
18 the “tax,” the excess may be carried over to reduce the “tax” in
19 the following year, and succeeding seven years if necessary, until
20 the credit is exhausted.

21 (e) Any deduction otherwise allowed under this part for qualified
22 wages shall not be reduced by the amount of the credit allowed
23 under this section.

24 (f) For purposes of this section:

25 (1) All employees of the trades or businesses that are treated as
26 related under either Section 267, 318, or 707 of the Internal
27 Revenue Code shall be treated as employed by a single taxpayer.

28 (2) In determining whether the taxpayer has first commenced
29 doing business in this state during the taxable year, the provisions
30 of subdivision—~~(f)~~ (g) of Section—~~17276~~ 24416.20, without
31 application of paragraph (7) of that subdivision, shall apply.

32 (g) (1) (A) Credit under this section and Section 17053.80 shall
33 be allowed only for credits claimed on timely filed original returns
34 received by the Franchise Tax Board on or before the ~~cut-off~~ *cutoff*
35 date established by the Franchise Tax Board.

36 (B) For purposes of this paragraph, the ~~cut-off~~ *cutoff* date shall
37 be the last day of the calendar quarter within which the Franchise
38 Tax Board estimates it will have received timely filed original
39 returns claiming credits under this section and Section 17053.80

1 that cumulatively total four hundred million dollars (\$400,000,000)
2 for all taxable years.

3 (2) The date a return is received shall be determined by the
4 Franchise Tax Board.

5 (3) (A) The determinations of the Franchise Tax Board with
6 respect to the ~~cut-off~~ *cutoff* date, the date a return is received, and
7 whether a return has been timely filed for purposes of this
8 subdivision may not be reviewed in any administrative or judicial
9 proceeding.

10 (B) Any disallowance of a credit claimed due to a determination
11 under this subdivision, including the application of the limitation
12 specified in paragraph (1), shall be treated as a mathematical error
13 appearing on the return. Any amount of tax resulting from such
14 disallowance may be assessed by the Franchise Tax Board in the
15 same manner as provided by Section 19051.

16 (4) The Franchise Tax Board shall periodically provide notice
17 on its *Internet* Web site with respect to the amount of credit under
18 this section and Section 17053.80 claimed on timely filed original
19 returns received by the Franchise Tax Board.

20 (h) (1) The Franchise Tax Board may prescribe rules, ~~guidelines~~
21 *guidelines*, or procedures necessary or appropriate to carry out the
22 purposes of this section, including any guidelines regarding the
23 limitation on total credits allowable under this section and Section
24 17053.80 and guidelines necessary to avoid the application of
25 paragraph (2) of subdivision (f) through split-ups *splitups*, shell
26 corporations, partnerships, tiered ownership structures, or
27 otherwise.

28 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
29 Division 3 of Title 2 of the Government Code does not apply to
30 any standard, criterion, procedure, determination, rule, notice, or
31 guideline established or issued by the Franchise Tax Board
32 pursuant to this section.

33 (i) This section shall remain in effect only until December 1 of
34 the calendar year after the year of the ~~cut-off~~ *cutoff* date, and as
35 of that December 1 is repealed.

36 *SEC. 5. This act provides for a tax levy within the meaning of*
37 *Article IV of the Constitution and shall go into immediate effect.*

1 ~~SECTION 1.—It is the intent of the Legislature to enact~~
2 ~~legislation that would ensure all California have access to fresh~~
3 ~~produce and healthy food options.~~

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